

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Jessie McCarthen,)	
)	C/A No. 9:11-1510-MBS
Petitioner,)	
)	
vs.)	
)	ORDER
South Carolina,)	
)	
Respondent.)	
_____)	

Petitioner Jessie McCarthen, proceeding pro se, filed a petition for writ of habeas corpus on June 21, 2011, asserting that he was denied effective assistance of counsel. See 28 U.S.C. § 2254. In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Bristow Marchant for pretrial handling.

On November 7, 2011, Respondent filed a return and motion for summary judgment. By order filed November 8, 2011, in accordance with Roseboro v. Garrison, 528 F.2d 309 (4th cir. 1975), Petitioner was advised of the summary judgment procedure and the possible consequences of failing to respond adequately. Despite being granted extensions of time, Petitioner filed no response to Respondent's motion for summary judgment. On February 16, 2012, the Magistrate Judge issued an order granting Petitioner until February 26, 2012, to file a response to Respondent's motion for summary judgment. Petitioner was cautioned that if he failed to respond, the within action would be recommended for dismissal for failure to prosecute. See Fed. R. Civ. P. 41(b). Petitioner did not respond to the Magistrate Judge's February 26, 2012 order or to Respondent's motion for summary judgment. Accordingly, on February 28, 2012, the Magistrate Judge issued a Report and Recommendation in which he recommended that Petitioner's § 2254 petition be dismissed with prejudice for lack of prosecution. Petitioner filed no objection to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court may accept, reject, or modify, in whole or in part, the Report and Recommendation or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

The court has thoroughly reviewed the record. The court concurs with the Magistrate Judge’s recommendation and incorporates the Report and Recommendation herein. Petitioner’s § 2254 petition is dismissed *with prejudice* for lack of prosecution.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

Columbia, South Carolina

March 25, 2012

NOTICE OF RIGHT TO APPEAL

Petitioner is hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.